

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HOUSE BILL 2764

AN ACT

AMENDING SECTIONS 8-814, 8-846 AND 8-871, ARIZONA REVISED STATUTES; AMENDING TITLE 8, CHAPTER 10, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 8-874; RELATING TO DEPENDENT CHILDREN.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-814, Arizona Revised Statutes, is amended to
3 read:

4 8-814. Permanent guardianship subsidy: offsets:
5 discontinuation: annual review: appeals: definition

6 A. The department of economic security shall establish and administer
7 an ongoing program of subsidized permanent guardianship. Subsidies shall be
8 provided from monies appropriated to the department or made available to it
9 from other sources for permanent guardianship purposes.

10 B. The department may provide a subsidy to an applicant on behalf of a
11 child subject to the requirements of this section.

12 C. An applicant is not eligible for a subsidy until the applicant
13 demonstrates that the child or a responsible person on behalf of the child
14 has applied for all benefits to which the child is entitled from other state
15 or federal programs.

16 D. The department shall determine the appropriate amount of the
17 subsidy, which shall not exceed the maintenance payment allowable for
18 an adoption subsidy pursuant to chapter 1, article 2 of this title. The
19 amount of the subsidy shall be offset by benefits received pursuant to the
20 programs described in subsection C of this section.

21 E. The department shall conduct an annual review of a subsidy to
22 determine that the permanent guardian continues to be eligible for the
23 subsidy and that the subsidy is for the appropriate amount.

24 F. A permanent guardian who is receiving a subsidy shall:

25 1. Cooperate with the department in the annual review process.

26 2. Notify the department in writing of any change:

27 (a) That would lead to discontinuance of the subsidy pursuant to
28 subsection ~~E~~ G of this section.

29 (b) In benefits being received from programs described in subsection C
30 of this section within two weeks of the change.

31 (c) In address within two weeks of the change.

32 G. The department shall discontinue a subsidy if any of the following
33 occurs:

34 1. The permanent guardianship terminates.

35 2. The child dies or does not reside with the permanent guardian.

36 3. The child reaches eighteen years of age, except that the department
37 may continue the subsidy until the child's twenty-second birthday if the
38 child is enrolled in and regularly attending school and has not received a
39 high school diploma or certificate of equivalency.

40 4. The applicant fails to comply with any requirement in this section.

41 H. Any decision denying, reducing or terminating a permanent
42 guardianship subsidy is appealable pursuant to title 41, chapter 6 and
43 chapter 14, article 3.

1 I. Notwithstanding section 41-3102, this program does not include a
2 specific expiration date.

3 J. For the purposes of this section, "applicant" means a person who is
4 appointed as a permanent guardian pursuant to section ~~8-525.01~~ 8-872 OR AS A
5 PROVISIONAL OR SUCCESSOR PERMANENT GUARDIAN PURSUANT TO SECTION 8-874 and who
6 applies for a subsidy pursuant to this section.

7 Sec. 2. Section 8-846, Arizona Revised Statutes, is amended to read:
8 ~~8-846.~~ Services provided to the child and family

9 A. Except as provided in ~~subsection~~ SUBSECTIONS B AND C of this
10 section, if the child has been removed from the home, the court shall order
11 the department to make reasonable efforts to provide services to the child
12 and the child's parent.

13 B. The court shall consider the following factors and reunification
14 services are not required to be provided if the court finds by clear and
15 convincing evidence that:

16 1. One or more of the following aggravating circumstances exist:

17 (a) A party to the action provides a verified affidavit that states
18 that a reasonably diligent search has failed to identify and locate the
19 parent within three months after the filing of the dependency petition or the
20 parent has expressed no interest in reunification with the child for at least
21 three months after the filing of the dependency petition.

22 (b) The parent or guardian is suffering from a mental illness or
23 mental deficiency of such magnitude that it renders the parent or guardian
24 incapable of benefitting from the reunification services. This finding shall
25 be based on competent evidence from a psychologist or physician that
26 establishes that, even with the provision of reunification services, the
27 parent or guardian is unlikely to be capable of adequately caring for the
28 child within twelve months after the date of the child's removal from the
29 home.

30 (c) The child previously has been removed and adjudicated dependent
31 due to physical or sexual abuse. After the adjudication the child was
32 returned to the custody of the parent or guardian and then subsequently
33 removed within eighteen months due to additional physical or sexual abuse.

34 (d) A child is the victim of serious physical or emotional injury by
35 the parent or guardian or by any person known by the parent or guardian, if
36 the parent or guardian knew or reasonably should have known that the person
37 was abusing the child.

38 (e) The parent's rights to another child have been terminated, the
39 parent has not successfully addressed the issues that led to the termination
40 and the parent is unable to discharge parental responsibilities.

41 (f) After a finding that a child is dependent, all of the following
42 are true:

43 (i) A child has been removed from the parent or guardian on at least
44 two previous occasions.

1 (ii) Reunification services were offered or provided to the parent or
2 guardian after the removal.

3 (iii) The parent or guardian is unable to discharge parental
4 responsibilities.

5 2. The parent or guardian of a child has been convicted of murder or
6 manslaughter of a child, or of sexual abuse OF A CHILD, sexual assault of a
7 child, sexual conduct with a minor, molestation of a child, commercial sexual
8 exploitation of a minor, sexual exploitation of a minor, or luring a minor
9 for sexual exploitation.

10 3. The parent or guardian of a child has been convicted of aiding or
11 abetting or attempting, conspiring or soliciting to commit any of the crimes
12 listed in paragraph 2 of this subsection.

13 C. IF A DEPENDENCY PETITION WAS FILED PURSUANT TO SECTION 8-874,
14 SUBSECTION J, THE COURT MAY DIRECT THE DIVISION NOT TO PROVIDE REUNIFICATION
15 SERVICES TO THE CHILD'S PARENTS UNLESS THE COURT FINDS BY CLEAR AND
16 CONVINCING EVIDENCE THAT THESE SERVICES WOULD BE IN THE CHILD'S BEST
17 INTERESTS.

18 Sec. 3. Section 8-871, Arizona Revised Statutes, is amended to read:
19 8-871. Permanent guardianship of a child

20 A. The court may establish a permanent guardianship between a child
21 and the guardian if the prospective guardianship is in the child's
22 best interests and all of the following apply:

23 1. The child has been adjudicated a dependent child.

24 2. The child has been in the custody of the prospective permanent
25 guardian for at least nine months as a dependent child. The court may
26 waive this requirement for good cause.

27 3. If the child is in the custody of the division or agency, the
28 division or agency has made reasonable efforts to reunite the parent and
29 child and further efforts would be unproductive. The court may waive this
30 requirement if it finds that reunification efforts are not required by law or
31 if reunification of the parent and child is not in the child's best interests
32 because the parent is unwilling or unable to properly care for the child.

33 4. The likelihood that the child would be adopted is remote or
34 termination of parental rights would not be in the child's best interests.

35 B. The court may consider any adult, including a relative or foster
36 parent, as a permanent guardian. An agency or institution may not be a
37 permanent guardian. The court shall appoint a person nominated by the child
38 if the child is ~~fourteen or more~~ AT LEAST TWELVE years of age, unless the
39 court finds that the appointment would not be in the child's best interests.
40 THE COURT SHALL CONSIDER THE CHILD'S OBJECTION TO THE APPOINTMENT OF THE
41 PERSON NOMINATED AS PERMANENT GUARDIAN.

42 C. In proceedings for permanent guardianship, the court shall give
43 primary consideration to the physical, mental and emotional needs of the
44 child.

1 D. Unless otherwise set forth in the final order of permanent
2 guardianship, a permanent guardian is vested with all of the rights and
3 responsibilities set forth in section 14-5209 relating to the powers and
4 duties of a guardian of a minor, other than those rights and responsibilities
5 of the birth or adoptive parent, if any, that are set forth in the decree of
6 permanent guardianship.

7 E. AT THE GUARDIANSHIP HEARING, OR BY NOTICE FILED AFTER THE
8 APPOINTMENT OF A PERMANENT GUARDIAN OR A SUCCESSOR PERMANENT GUARDIAN
9 PURSUANT TO SECTION 8-874, THE GUARDIAN MAY ADVISE THE COURT AS TO THE
10 IDENTITY AND CONTACT INFORMATION OF POTENTIAL SUCCESSOR PERMANENT GUARDIANS.

11 ~~E.~~ F. The division or agency shall not be responsible for THE
12 requirements pursuant to subsection A, paragraph 3 of this section for a
13 petition concerning a child not in the care, custody and control of the
14 division or agency.

15 Sec. 4. Title 8, chapter 10, article 5, Arizona Revised Statutes, is
16 amended by adding section 8-874, to read:

17 8-874. Appointment of successor permanent guardian

18 A. IF A PERMANENT GUARDIAN APPOINTED PURSUANT TO SECTION 8-872 IS
19 UNABLE OR UNWILLING TO CONTINUE TO SERVE AS PERMANENT GUARDIAN, THE PERMANENT
20 GUARDIAN, THE DIVISION OR AN INTERESTED PARTY MAY FILE A MOTION FOR
21 APPOINTMENT OF A SUCCESSOR PERMANENT GUARDIAN. THE MOTION SHALL BE VERIFIED
22 BY THE PERSON FILING THE MOTION AND SHALL INCLUDE THE FOLLOWING:

23 1. THE NAME, SEX, ADDRESS AND DATE AND PLACE OF BIRTH OF EACH CHILD
24 WHO IS THE SUBJECT OF THE MOTION.

25 2. THE NAME AND ADDRESS OF THE PERMANENT GUARDIAN.

26 3. THE REASON WHY THE PERMANENT GUARDIAN IS NO LONGER ABLE OR WILLING
27 TO SERVE AS PERMANENT GUARDIAN OF THE CHILD.

28 4. THE NAME AND ADDRESS OF THE PROPOSED SUCCESSOR PERMANENT GUARDIAN,
29 IF ANY.

30 B. IF THE MOTION IDENTIFIES A PROPOSED SUCCESSOR PERMANENT GUARDIAN,
31 THE MOTION SHALL BE ACCOMPANIED BY AN AFFIDAVIT BY THE PROPOSED SUCCESSOR
32 PERMANENT GUARDIAN THAT STATES:

33 1. THE RELATIONSHIP BETWEEN THE PROPOSED SUCCESSOR PERMANENT GUARDIAN
34 AND THE CHILD.

35 2. THE PROPOSED SUCCESSOR GUARDIAN'S AGREEMENT TO ASSUME THE DUTIES
36 AND RESPONSIBILITIES OF PERMANENT GUARDIAN, INCLUDING COMPLIANCE WITH ALL
37 COURT ORDERS.

38 C. ON THE FILING OF A MOTION PURSUANT TO SUBSECTION A OF THIS SECTION,
39 THE COURT SHALL:

40 1. SET A DATE FOR AN INITIAL GUARDIANSHIP REVIEW HEARING WITHIN THIRTY
41 DAYS AFTER THE MOTION IS FILED.

42 2. APPOINT AN ATTORNEY FOR THE CHILD AND APPOINT AN ATTORNEY FOR THE
43 PROPOSED SUCCESSOR GUARDIAN, IF NECESSARY. THE COURT IS NOT REQUIRED TO
44 APPOINT AN ATTORNEY FOR THE PARENT OF THE CHILD.

1 3. ENTER TEMPORARY ORDERS, WHICH MAY INCLUDE:

2 (a) PLACING THE CHILD IN THE TEMPORARY CUSTODY OF AN INDIVIDUAL OR
3 AGENCY OR THE DIVISION AND DIRECTING THE DIVISION TO PROVIDE NECESSARY
4 SERVICES AS MAY BE NECESSARY FOR THE SAFETY AND WELL-BEING OF THE CHILD.

5 (b) DIRECTING THE DIVISION TO COMPLETE A CRIMINAL RECORDS CHECK AND
6 HOME STUDY TO DETERMINE THE SUITABILITY OF THE PROPOSED SUCCESSOR PERMANENT
7 GUARDIAN TO SERVE AS THE PERMANENT GUARDIAN OF THE CHILD.

8 (c) DIRECTING THE DIVISION TO CONDUCT AN INVESTIGATION TO DETERMINE
9 WHETHER DEPENDENCY PROCEEDINGS SHOULD BE INITIATED.

10 D. THE COURT SHALL ORDER THE PERSON FILING THE MOTION TO GIVE NOTICE
11 OF THE HEARING AND TO PROVIDE A COPY OF THE MOTION TOGETHER WITH THE COURT'S
12 TEMPORARY ORDERS TO THE PERMANENT GUARDIAN, THE DIVISION, THE CHILD'S
13 ATTORNEY, THE CHILD'S PARENTS AND ANY OTHER INTERESTED PERSON AS ORDERED BY
14 THE COURT. THE PERSON FILING THE MOTION SHALL PROVIDE NOTICE BY FIRST CLASS
15 MAIL UNLESS THE COURT ORDERS THAT NOTICE BE GIVEN BY OTHER MEANS. IF THE
16 CHILD IS SUBJECT TO THE INDIAN CHILD WELFARE ACT OF 1978, THE PERSON FILING
17 THE MOTION SHALL PROVIDE NOTICE, PURSUANT TO 25 UNITED STATES CODE SECTION
18 1912, TO THE INDIAN PARENT, THE INDIAN CUSTODIAN AND THE CHILD'S TRIBE. IF
19 THE IDENTITY OR LOCATION OF THE INDIAN CHILD'S PARENT CANNOT BE DETERMINED,
20 THE PERSON FILING THE MOTION SHALL PROVIDE NOTICE TO THE UNITED STATES
21 SECRETARY OF THE INTERIOR PURSUANT TO 25 UNITED STATES CODE SECTION 1912.

22 E. IF THE CHILD IS AT LEAST TWELVE YEARS OF AGE, THE COURT SHALL
23 CONSIDER THE CHILD'S OBJECTION TO THE PROPOSED SUCCESSOR PERMANENT GUARDIAN.

24 F. AT THE HEARING, IF THE COURT FINDS THAT THE PROPOSED SUCCESSOR
25 PERMANENT GUARDIAN IS SUITABLE TO ASSUME THE RESPONSIBILITIES OF PERMANENT
26 GUARDIAN AND THAT APPOINTMENT WOULD BE IN THE CHILD'S BEST INTERESTS, THE
27 COURT SHALL GRANT THE MOTION, TERMINATE THE APPOINTMENT OF THE CURRENT
28 PERMANENT GUARDIAN AND ENTER ANY OTHER ORDERS AS MAY BE NECESSARY FOR THE
29 SAFETY AND WELL-BEING OF THE CHILD, INCLUDING:

30 1. APPOINTING THE PROPOSED SUCCESSOR PERMANENT GUARDIAN AS A
31 PROVISIONAL PERMANENT GUARDIAN OF THE CHILD FOR A PERIOD NOT TO EXCEED NINE
32 MONTHS AND SETTING A HEARING TO DETERMINE WHETHER THE APPOINTMENT SHOULD BE
33 MADE PERMANENT.

34 2. APPOINTING THE PROPOSED SUCCESSOR PERMANENT GUARDIAN AS PERMANENT
35 GUARDIAN OF THE CHILD IF THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE
36 THAT THE PROPOSED SUCCESSOR PERMANENT GUARDIAN IS SUITABLE TO SERVE AS THE
37 CHILD'S PERMANENT GUARDIAN AND THAT THE APPOINTMENT WOULD BE IN THE CHILD'S
38 BEST INTERESTS.

39 3. DIRECTING THE DIVISION TO MONITOR THE PLACEMENT DURING THE PERIOD
40 OF PROVISIONAL APPOINTMENT AND TO PROVIDE NECESSARY SERVICES TO SUPPORT THE
41 PROVISIONAL PLACEMENT, INCLUDING ASSISTING THE PROVISIONAL PERMANENT GUARDIAN
42 TO MAKE AN APPLICATION FOR GUARDIANSHIP SUBSIDY AND OTHER AVAILABLE BENEFITS.

1 G. IF THE COURT ENTERS AN ORDER APPOINTING A SUCCESSOR PERMANENT
2 GUARDIAN, THE COURT SHALL SET A REVIEW HEARING WITHIN ONE YEAR AFTER THE
3 APPOINTMENT AND MAY ORDER THE DIVISION OR AN AGENCY TO CONDUCT AN
4 INVESTIGATION AND SUBMIT A WRITTEN REPORT BEFORE THE HEARING.

5 H. A SUCCESSOR PERMANENT GUARDIAN IS VESTED WITH ALL OF THE RIGHTS AND
6 RESPONSIBILITIES PRESCRIBED IN SECTION 14-5209 RELATING TO THE POWERS AND
7 DUTIES OF A GUARDIAN OF A MINOR, OTHER THAN THOSE RIGHTS AND RESPONSIBILITIES
8 OF A BIRTH OR ADOPTIVE PARENT PRESCRIBED IN THE ORDER APPOINTING THE
9 SUCCESSOR PERMANENT GUARDIAN.

10 I. THE ORDER APPOINTING THE SUCCESSOR PERMANENT GUARDIAN MAY PROVIDE
11 FOR CONTACT BETWEEN THE CHILD AND THE NATURAL OR ADOPTIVE PARENTS, SIBLINGS
12 AND OTHER RELATIVES OR KIN IF CONTACT IS IN THE CHILD'S BEST INTERESTS. THE
13 COURT MAY ORDER THE PARENT TO CONTRIBUTE TO THE SUPPORT OF THE CHILD AND TO
14 PAY ANY COSTS FOR VISITATION TO THE EXTENT IT FINDS THE PARENT ABLE TO
15 CONTRIBUTE.

16 J. IF THE MOTION TO APPOINT A SUCCESSOR PERMANENT GUARDIAN DOES NOT
17 COMPLY WITH THIS SECTION, OR IF THE COURT DOES NOT APPOINT A PROVISIONAL OR
18 PERMANENT SUCCESSOR PERMANENT GUARDIAN, THE COURT MAY ORDER THE DIVISION OR
19 THE CHILD'S ATTORNEY TO FILE A DEPENDENCY PETITION REGARDING THE CHILD AND
20 MAY ENTER TEMPORARY ORDERS THAT ARE NECESSARY FOR THE SAFETY AND WELL-BEING
21 OF THE CHILD. IN THESE CASES, THE COURT MAY DIRECT THE DIVISION NOT TO
22 PROVIDE REUNIFICATION SERVICES TO THE CHILD'S PARENTS UNLESS THE COURT FINDS
23 BY CLEAR AND CONVINCING EVIDENCE THAT IT WOULD BE IN THE CHILD'S BEST
24 INTERESTS.